

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

DISTRICT JUDGE GERALD BRUCE LEE
MAGISTRATE JUDGE JOHN F. ANDERSON

MICROSOFT CORPORATION)	
)	
Plaintiff,)	
v.)	CASE NO. 1:08cv00596-GBL-JFA
)	TRIAL BY JURY DEMANDED
L & Y ELECTRONICS, INC.,)	
)	
JOHN A. LINTON, and)	
)	
SANGSOON LINTON)	
)	
Defendants.)	

DEFENDANT SANGSOON LINTON’S MEMORANDUM IN SUPPORT OF HER
SECOND MOTION TO COMPEL

Defendant, Sangsoon Linton, (“Defendant” hereinafter) by counsel, submit this memorandum in support of Defendant Sangsoon Linton’s Second Motion to Compel as follows:

1. This case involves a jury trial for Microsoft’s claims that Defendant willfully infringed Microsoft Corporation’s (“Microsoft” hereinafter) intellectual property rights by distributing counterfeit copies of its software product Microsoft Office Professional 2003 Edition (“Office 2003”). As Office 2003 is an abandoned product, Microsoft seeks instead of actual damages, statutory damages under U.S. copyright and trademark laws. Microsoft alleges that eight

registered trademarks and eight registered copyrights were infringed. Affirmative defenses raised by defendants include characterizing as generic the trademark “WINDOWS,” and reliance by Defendants on Microsoft’s software “activation” to avoid counterfeit software.

2. On September 16, 2008 Defendant Sangsoon Linton served on Microsoft her first interrogatories (Defendant Sangsoon Linton’s First Interrogatories to Plaintiff Microsoft Corporation). In most part, the interrogatories were directed to the commercial uses of Microsoft registered trademarks for its Office suites and other listed trademarks. Microsoft’s response is attached hereto as Exhibit A. Microsoft has indicated it will answer by October 20, 2008 all interrogatories except 9, 10, 11 and 13. Defendant is seeking answers to interrogatories 10, 11 and 13.

3. Interrogatory 10 seeks description of Microsoft’s activation process. Defendants seek to understand the activation and why Microsoft seeks willful damages when its activation process informed Defendants that the two software copies at issue were genuine.

4. Recently Microsoft has added a “Windows Genuine Advantage” process for confirming the legitimacy of software. Interrogatory 11 seeks a description of this replacement activation process and how it differs from the activation process. It is believed the differences will be instructive as to why Microsoft’s activation process may have given false results in this case.

5. Interrogatory 13 of Sangsoon’s interrogatories refers to an article describing the development and history of Office 2003. The article is planned to be used as background material for the jury and will thereby reduce time at trial and the need to call experts to

describe the components, development and distinctions of Office 2003 over other Office products. The article is attached hereto as Exhibit B.

6. Interrogatory 13 asks Microsoft to provide their corrections to the article. During Rule 37 discussions, Microsoft was given the option of either answering Interrogatory 13 or providing an alternate inhouse document that would describe the same topics. Microsoft indicated they are refusing both

CONCLUSION

WHEREFORE Defendant respectfully request that Plaintiff be compelled to fully respond to Interrogatories 10, 11 and 13 of Defendant Sangsoon Linton's First Interrogatories to Plaintiff Microsoft Corporation.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 2008, I will electronically file the forgoing Memorandum with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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